

Deposition of Eddie McCafferty
January 5, 2005

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UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

C.A. NO. 1:04-CV-11524-DPW

TYCO HEALTHCARE GROUP, LP, *
Plaintiff, *
vs. *
MEDICAL PRODUCTS, INC., *
Defendant. *

DEPOSITION OF EDDIE MCCAFFERTY, a witness
called on behalf of the Plaintiff, taken pursuant
to the applicable provisions of the Federal Rules
of Civil Procedure, before Jacqueline Curran,
Registered Merit Reporter and Notary Public in and
for the Commonwealth of Massachusetts, at the law
offices of Clements & Clements, LLP, 50 Federal
Street, Boston, Massachusetts, on Wednesday,
January 5, 2005, commencing at 10:10 a.m.

CURRAN COURT REPORTING
21 Rowe Hill Road
Stoneham, Massachusetts 02180
(781) 279-8400

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1 A P P E A R A N C E S

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1 Q. Do any of your customers distribute to
2 veterinarian markets?

3 A. I'm sure they do. I don't know for, you
4 know, I'm sure they do.

5 Q. Why do you think that?

6 A. Well, we -- I mean, the broad base that
7 we sell to we feel like we sell to distributors
8 that sell to dental, veterinarian, medical, home
9 health, DMEs.

10 Q. Are there distributors that focus on the
11 veterinarian market as opposed to the human health
12 market?

13 A. There is.

14 Q. And who are the ones that you're
15 familiar with who do that?

16 MR. GALVIN: Are you asking for
17 distributors in general who focus on
18 veterinarian groups?

19 Q. Yes. And that you're familiar with, Mr.
20 McCafferty, from your business that you've done
21 business with them.

22 A. Oh, that I've done business with?

23 Q. Let me break it up. You're familiar
24 with some distributors concentrate on the

1 at MPI?

2 A. For?

3 Q. Confidentiality policies for your
4 employees.

5 A. Oh, yes, we do.

6 Q. Are those written?

7 A. They're written and signed, yes.

8 Q. Meaning they're signed by each employee?

9 A. Yes, and two witnesses.

10 Q. Do you maintain those --

11 A. Yes.

12 Q. -- in a file?

13 A. We do.

14 Q. Do you take any other steps to keep the
15 information about your customers confidential?

16 A. No.

17 Q. Are there directories of medical
18 distributors?

19 A. I'm sorry?

20 Q. Are there directories --

21 A. Yes.

22 Q. -- in the trade for medical
23 distributors?

24 A. Yes.

1 contract? Okay?

2 A. Yes.

3 Q. So as I understood your testimony, the
4 2001 contract came about as a result of Rob Cotten
5 coming to visit you, is that right?

6 A. Yes.

7 Q. Other than Rob Cotten, did you, Eddie
8 McCafferty, speak to anybody at Kendall before the
9 2001 contract was put in place?

10 A. I don't recall that I did.

11 Q. Do you know of anyone at Kendall or Tyco
12 Healthcare who was involved in that contract other
13 than -- meaning the 2001 contract -- other than
14 Rob Cotten?

15 A. Not -- I mean, personally, I don't, no.
16 No, I don't.

17 Q. Sometime in 2001 you resumed purchasing
18 products directly from Kendall, Tyco Healthcare?

19 A. Yes, sir.

20 MR. CLEMENTS: I want to turn
21 for a moment, Mr. McCafferty, to some
22 documents and ask you about that that MPI
23 produced in this litigation.

24 (Deposition Exhibit No. 3, PO History

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1 did take place, it would be, like I said,
2 incidental. I mean, it would not be anything I
3 would remember like, you know, call up and do you
4 have some gauze that we need or something, you
5 know, it would be something just probably filling
6 an order for maybe one item left or something, you
7 know, but not really anything.

8 Q. So you can't recall any sales MPI
9 made --

10 A. No.

11 Q. -- to CP Medical in the, say the past
12 six to eight years?

13 A. Probably not, no.

14 Q. Other than Pat Ferguson, who else do you
15 know at CP Medical?

16 A. I know Jeff only on the phone.

17 Q. Who's Jeff?

18 A. He's --

19 Q. What's his last name?

20 A. Burrow or something like that. I'm not
21 really --

22 Q. Barron?

23 A. Barron, there you go.

24 Q. Do you know what Jeff Barron does at CP

1 Q. CP Medical wasn't actually your customer
2 for MPI, correct?

3 A. No, they were.

4 Q. Did you sell any Kendall products to CP
5 Medical?

6 A. No. No, I didn't, but I couldn't.

7 Q. Well, did you?

8 A. No.

9 Q. And you understood when you called CP
10 Medical that you were setting up CP Medical simply
11 on the contract regardless of whether you'd sell
12 products to them or not, did you not?

13 A. Yes. Yes.

14 Q. And you didn't care whether CP Medical
15 actually bought the products or whether you sold
16 them to somebody else, right?

17 A. Exactly.

18 Q. And I asked you if that was a common
19 practice and you said yes, correct?

20 A. Well, let me say this, it's common to
21 call an account like a company and ask them if you
22 can put them on a contract. I may have
23 misunderstood you on that.

24 Q. So it's common for you to call a

1 Q. And you've had contracts where you've
2 had customer buckets where you put sales into,
3 right?

4 A. You know, I'd have to -- I don't know
5 when, I mean, I'd have to look back and see.

6 Q. Before 1999?

7 A. I don't know. I'd have to look back and
8 see. I'm not sure.

9 Q. Where would you look back to see?

10 A. I would just have to see if there was
11 any files available that I could pull to see how
12 the contracts were written, you know, or done
13 'cause contracts can change from one time to
14 another, you know.

15 Q. So it's your testimony sitting here
16 today that you do not know whether you used
17 buckets to put sales into in other contracts
18 before 1999?

19 A. That's right.

20 Q. You don't know that?

21 A. I don't know.

22 (Deposition Exhibit No. 5, Kendall
23 Healthcare Company Rebate Contract
24 Notification, marked for identification)

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1 Q. I'm going to show you Exhibit 5, Mr.
2 McCafferty. Let me know when you've had a chance
3 to look at that.

4 A. Okay.

5 Q. You've looked at Exhibit 5?

6 A. Yes.

7 Q. That's your handwriting on the first
8 page?

9 A. Yes.

10 Q. Could you read what it says?

11 A. Kendall contracts Fort Smith, CP Medical
12 or CP rather, I'm sorry.

13 Q. And you got these documents from the MPI
14 files, is that right?

15 A. No. This came from Kendall.

16 Q. No. I'm asking -- I'll represent to you
17 that your company produced this document in this
18 litigation.

19 A. Oh, yeah.

20 Q. I'm asking you where you got it?

21 A. Yeah. We have a file, I'm sure, a
22 Kendall file that this was in.

23 Q. And where was that file maintained?

24 A. In purchasing, just in a file cabinet.

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1 A. It's our cost, yeah.

2 Q. That's your contracts, isn't it?

3 A. I'm sorry?

4 Q. It's your contracts with Kendall, isn't
5 it?

6 A. Well, yeah, but I mean, it's -- I mean,
7 it's a cost is what we --

8 Q. Let me direct your attention back to the
9 first page of Exhibit 5. You wrote Kendall
10 contracts, didn't you?

11 A. Uh-huh, I did.

12 Q. And one of the or some of the contracts
13 concern Fort Smith, the other concerns CP Medical,
14 correct?

15 A. Yes.

16 Q. And now, is it true that Exhibit 5
17 contains the Kendall contracts with respect to CP
18 Medical and Fort Smith?

19 A. Yes.

20 Q. Would you turn to MPI 0150, the first
21 page?

22 A. Okay.

23 Q. What's the title of the document?

24 A. Kendall Healthcare Company Rebate

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1 A. Indirect.

2 Q. Do you know what that means?

3 A. No.

4 Q. Do you recall when the CP Medical
5 contract terminated?

6 MR. GALVIN: Which year?

7 MR. CLEMENTS: Well, the CP
8 Medical contract that went through 2003.

9 A. I think it was July of '03.

10 Q. Your counsel is raising a good point, I
11 want to clarify when we're talking about the CP
12 Medical contract, we're including the extensions
13 that carried it through '03 that you testified
14 about, okay? Do you understand that?

15 A. Yes.

16 Q. So the CP Medical contract when it was
17 finally terminated, your recollection was July of
18 2003?

19 A. Yes.

20 Q. Now, throughout that time the CP Medical
21 contract was in effect, MPI purchased products
22 under that contract from Kendall, correct?

23 A. Yes.

24 Q. The products involved Monoject needles

1 and syringes, is that right?

2 A. That's right.

3 Q. Were there other products besides that?

4 A. No. No.

5 Q. All needles and syringes?

6 A. Yes.

7 Q. When MPI purchased those products under
8 the CP Medical contract, MPI submitted rebate
9 claims to Kendall under the contract, correct?

10 A. Yes.

11 Q. And on the rebate claims, CP Medical was
12 identified as the end customer, correct?

13 A. Yes.

14 Q. Of the products purchased under the CP
15 Medical contract, was a single product actually
16 sold by MPI to CP Medical?

17 A. No.

18 Q. Not one?

19 A. No.

20 Q. Was a single product purchased under the
21 CP Medical contract by MPI sold to any CP Medical
22 end user customer?

23 A. No.

24 Q. Not one?

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1 A. Not one.

2 Q. No products you purchased under the CP
3 Medical contract were drop shipped by MPI to CP
4 Medical customers, were they?

5 A. No.

6 Q. They were all sold to MPI distributor
7 customers?

8 A. Yes.

9 Q. Did you ever tell anyone at Kendall that
10 you were selling the CP Medical contract products
11 to distributor customers of MPI?

12 A. Rob Cotten knew.

13 Q. Did you tell Rob Cotten that?

14 A. He was the one that suggested it.

15 Q. Did you tell Rob Cotten that?

16 A. Yes. Yes.

17 Q. When did you tell Rob Cotten that?

18 A. The day he was going to do the contract.

19 Q. And what did you tell him?

20 A. He said he wanted, again, to set up two,
21 you know, accounts to put the sales in, and I told
22 Rob, I said, I'm not going to sell to just two
23 people if that's what you're implying if we can't
24 sell to our customer base, he said, no, you don't

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1 understand, you can sell to your whole customer
2 base, this is like a blanket contract that we're
3 going to put some sales into this one and some
4 sales into that one, so I made it perfectly clear
5 up front.

6 Q. Did you tell Rob Cotten that your
7 customers were distributors?

8 A. Yes. He knew that, David Gaffney knew
9 that.

10 Q. Why do you think they knew that?

11 A. Well, that's what we do. I mean, that's
12 what we've always done that we sell to
13 distributors. I mean, I made no bones about it.
14 I mean, they knew that.

15 Q. Did you ever tell David Gaffney that you
16 sell to distributors?

17 A. He told me the first visit.

18 Q. How did he know that?

19 A. I don't know. He just walked in and he
20 said you're selling to a lot of our customers
21 which are distributors and we'd like to get some
22 sales leads, you know, we'd like to -- we'd like
23 to set you up direct so we could get sales credit.

24 Q. So David Gaffney told you you were

1 selling to Tyco Healthcare and Kendall customers?

2 A. Yes.

3 Q. And the distributors you were selling to
4 were Kendall customers?

5 A. Yeah. Basically he just said you're
6 selling -- his words were you're selling a lot of
7 product -- a lot of Kendall product to our
8 customers, we'd like to set you up direct so we
9 can get sales credit, so they both knew.

10 Q. Rob Cotten wasn't at the first
11 meeting --

12 A. No.

13 Q. -- that David Gaffney was at, was he?

14 A. No.

15 Q. When did you tell Rob Cotten that you
16 were selling to distributors who were Tyco
17 Healthcare customers?

18 A. I didn't tell Rob that. I just told Rob
19 that we were -- David's the one that said that. I
20 didn't -- I never said that statement at all.

21 Q. What did you tell Rob Cotten about your
22 customers?

23 A. I told him that we sell to the small to
24 medium distributors.